a nuisance can be applied between states. He suggests that there must be such a pollution of the stream as would amount to a *casus belli* between independent nations to justify the Court in issuing an injunction. *Missouri* v. *Illinois, etc.*, 200 U. S. 496. There is a previous *dictum* [3] of the Court which seems contrary to this view and which intimates that the same rules for determining the existence of a nuisance as between individuals should be applied in controversies between states. That would certainly seem to be the better view. There is nothing in the nature of a state which justifies it in doing to another state what an individual cannot do to another. The only cases in which the Court had suggested that a special rule should be adopted to govern states were where the question is what lapse of time should be sufficient to create a title to land by prescription,[4] and the reason for a distinction in this class is that a state is much slower to act than an individual. But in these cases the Court is really applying the common law doctrine of prescription, though adopting a different measure of time to suit the exigencies of the occasion. So, too, in stating that fraud [5] and illegality [6] are defenses to interstate contracts the Court apparently applied the notions of justice derived from the common law; and no reason appears why a case of nuisance should not be treated in the same way.

Revocation without Hearing of Assignable Liquor License. — In the case of Yick Wo *v.* Hopkins [1] the Supreme Court of the United States held that a statute vesting uncontrolled discretion in a commission to grant licenses to operate laundries in wooden buildings was unconstitutional, since the discrimination between those who did and those who did not meet the approval of the commission was arbitrary and unjust. In a later case [2] the Court held that discretion could be given to a commission to grant licenses to sell liquor, and distinguished the preceding case on the ground that the laundry business, unlike the liquor business, could not have been entirely prohibited. Statutes have also been sustained which invested officials with authority to grant or withhold without any hearing licenses to move houses along the street,[3] to orate on Boston Common,[4] to sell cigarettes,[5] to maintain a cow-barn in the city,[6] and, finally, to retail milk.[7] In the last case, if not in several of the others, the business could not be entirely prohibited, and hence this means of distinguishing the Yick Wo case failed. Indeed these cases virtually overrule that decision, and indicate that the Supreme Court is recognizing the evident policy of relying on men's judgment in the administration of the laws, and of interfering only when this discretion is abused.

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[3] See South Carolina *v.* Georgia, 93 U. S. 4, 14.
[4] Indiana *v.* Kentucky, 136 U. S. 479.
[5] Virginia *v.* West Virginia, *supra*, at 61 *et seq.*
[6] See Houston, etc., Co. *v.* Texas, 177 U. S. 66, 97.

[1] 118 U. S. 356.
[2] Crowley *v.* Christensen, 137 U. S. 86.
[3] Wilson *v.* Eureka City, 173 U. S. 32.
[4] Davis *v.* Massachusetts, 167 U. S. 43.
[5] Gundling *v.* Chicago, 177 U. S. 183.
[6] Fischer *v.* St. Louis, 194 U. S. 361.
[7] People, etc., Lieberman *v.* Van De Carr, 28 Sup. Ct. Rep. 145.

Another most interesting aspect of these decisions concerns the question whether a hearing must be granted the prospective or actual licensee. In the cases that have been cited, the court did not consider this question, but simply affirmed the action of the officials in denying or revoking a license without a hearing. One court, however, has reached the same result on consideration.[8] Some *dicta* of the state courts[9] and of the Supreme Court[10] might justify such a practice in the case of liquor licenses on the ground that, since the state may prohibit the traffic, it may grant or revoke the privilege of engaging in it at its pleasure, — that, therefore, such a right is no longer a property right. The objection to this reasoning is that regulation is not prohibition: and, as the trade is merely regulated, persons still retain a really valuable right to engage in it. In addition, the Supreme Court decision allowing the revocation of a license to retail milk without a hearing,[11] since it cannot be sustained on the ground that the selling of milk is a privilege, suggests that some other principle is involved. The Court has held that in administering a statute vesting a commission with the power to prescribe reasonable railroad rates, the commission must grant a hearing to the road whose rate is in question.[12] In the cases under consideration, absolute discretion has been given to the commissioners, and perhaps the distinction is that if the statute prescribes a rule which the board must apply, a hearing must be granted, whereas if there is no rule in granting licenses beyond such as may be formulated by the board itself, a hearing is unnecessary because futile. It certainly seems unnecessary to require that a licensee be given a hearing when there is no fact the proof of which will entitle him to a license, since obviously he cannot prove that the commission thinks he ought to have such a license. Of course the weakness of this reasoning is that the licensee might at a hearing present such cogent reasons in favor of his application as should influence the decision of a reasonable commission. In view of this the inference is strong that this administrative process is becoming due process of law in certain cases. In a recent New York case the statute vested a commission with power to revoke licenses having a surrender value, if the licensee did not conform to the building laws. If the above distinction is valid the court decided properly in holding that a hearing must be granted in such a case, for here the statute prescribed the test, — *viz.* compliance with the building statutes. *People ex rel. Loughran* v. *Flynn*, 110 N. Y. App. Div. 279.

Ultra Vires Contracts in the Federal Courts. — When the courts began to abandon the conception that corporations were from their intrinsic limitations incapable of making *ultra vires* contracts, and to treat the matter as one of right rather than of power, they had to cast about for a new theory by which to regulate their decisions. It might have been held that *ultra vires* contracts, though existing, were simply illegal, but on account of its obvious harshness, this rule has not been generally applied.[1] On the other hand, the courts might have treated *ultra vires* acts somewhat in the

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[8] United States *ex rel.* Roop *v.* Douglass, 19 D. C. 99.
[9] See Sherlock *v.* Stuart, 96 Mich. 193; Sprayberry *v.* City of Atlanta, 87 Ga. 120.
[10] See Crowley *v.* Christensen, *supra*, at 91.
[11] People, etc., *v.* Lieberman *v.* Van De Carr, *supra*.
[12] Chicago, etc., Railway Co. *v.* Minnesota, 134 U. S. 418, 457.

[1] See Bath Gas Light Co. *v.* Claffy, 151 N. Y. 24.